



**Montana Legislative Services Division**  
**Legal Services Office**

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**TO:** State Administration and Veterans' Affairs Interim Committee  
**FROM:** K. Virginia Aldrich  
**DATE:** August 2, 2013  
**RE:** Legislative Administrative Rule Review Report

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Pursuant to 5-5-228, MCA, the State Administration and Veterans' Affairs Interim Committee is responsible for reviewing administrative rules within its jurisdiction. Staff for the State Administration and Veterans' Affairs Interim Committee has prepared this report for informational purposes only. This report does not represent any action or opinion of the State Administration and Veterans' Affairs Interim Committee and does not preclude additional action that may be taken by the State Administration and Veterans' Affairs Interim Committee pursuant to its authority under the Montana Administrative Procedure Act (Title 2, chapter 4, MCA).

**MAR NOTICE NUMBER:** 44-2-181

**AGENCY/BOARD:** Secretary of State

**RULE CLASSIFICATION:** (e.g. substantive/interpretative/emergency/temporary): Substantive

**SUBJECT:** Ballot Forms and Uniformity, Fee Schedule for Statewide Voter Registration Lists and Extracts, Voter Registration Application and Information Requirements, Maintenance of Active and Inactive Voter Registration Lists for Elections, Late Registration Procedures, Procedures for Determining the Sufficiency of Identification and Eligibility to Vote at Polling Places, Various Election Procedures Relating to Voter Registration and Voting.

**NOTICE DESCRIPTION:** (e.g. proposal notice/adoption notice):  
Notice of proposed amendments and new rules

**SUMMARY OF RULE(S):**

The Secretary of State proposed to adopt, amend, amend and transfer, or transfer 15 rules regarding voter registration and voting.<sup>1</sup> This memo deals specifically with New Rule I which was discussed at the July, 2013 State Administration and Veterans' Affairs Interim Committee meeting.

Through statute, the Legislature directed the Secretary of State to adopt certain rules pertaining to ballot forms. The pertinent portion of the code section reads:

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<sup>1</sup> A more comprehensive description of the entire notice is contained in the State Administration and Veterans' Affairs Interim Committee rule memorandum dated July 9, 2013.

**13-12-202. Ballot form and uniformity.** (1) The secretary of state shall adopt statewide uniform rules that prescribe the ballot form for each type of ballot used in this state. The rules must conform to the provisions of this title unless the voting system used clearly requires otherwise. At a minimum, the rules must address:

- (a) the manner in which each type of ballot may be corrected under 13-12-204;
- (b) what provisions must be made on the ballot for write-in candidates;
- (c) the size and content of stubs on paper ballots, except as provided in 13-19-106(1);
- (d) how unvoted ballots must be handled;
- (e) how the number of individuals voting and the number of ballots cast must be recorded; and
- (f) the order and arrangement of voting system ballots. . . .

In response, the Secretary of State proposed to adopt New Rule I to fulfill the requirements of section 13-12-202, MCA. The Secretary's office had previously adopted this rule, and it had been erroneously repealed in 2011. In its original form, New Rule I stated:

NEW RULE I BALLOT FORM AND UNIFORMITY (1) Guidelines that prescribe the ballot form for each type of ballot used in this state are provided to each election administrator in the prescribed forms and election judge handbook, as applicable.

(2) The guidelines conform to the requirements of 13-12-202, MCA.

If the entire text of a rule does not appear within the rule itself, the Montana Administrative Procedure Act (MAPA) allows an agency to adopt a rule "by reference" subject to certain provisions. Among these provisions, the rule must include a citation to the exact material adopted by reference, a statement of the general subject matter of the omitted rule, and a statement of where the material may be obtained. Section 2-4-307, MCA. This allows the public a chance to comment on the rule provisions being incorporated by reference during the rulemaking process. Proposed New Rule I did not contain the required information under MAPA.

On July 11, 2013, the State Administration and Veterans' Affairs Interim Committee objected to New Rule I in order to place it on the agenda for discussion with the Secretary of State's office at the August 20, 2013, meeting. Pursuant to section 2-4-406, MCA, staff prepared a written objection for delivery to the Secretary of State's office. Under MAPA, the Secretary of State was required to respond in writing to the committee within 14 days of the mailing of the written objection. In the response, the Secretary of State proposed to amend the rule to conform with MAPA requirements.

The new proposed text of New Rule I reads:

NEW RULE I BALLOT FORM AND UNIFORMITY (1) The secretary of state adopts and incorporates by reference the document entitled, "Ballot Form and Uniformity Pursuant to 13-12-202 MCA Layout Instructions and Sample Ballots," which is available on the secretary of state's website at the following link:  
<http://sos.mt.gov/Elections/Officials/Forms/index.asp>, updated March 20, 2012.  
(2) The document incorporated by reference is provided to each election administrator and contains guidelines that prescribe the ballot form for each type of ballot used in this state, giving guidelines as to font, spacing, and printed instructions, to conform to the requirements of 13-12-202, MCA.

The new version of proposed New Rule I addressed the concerns as outlined at the last meeting, and the proposed rule now appears to be in conformance with MAPA's requirements for materials adopted by reference.

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